

NOTICE OF INTENT

Department of Environmental Quality
Office of the Secretary
Legal Affairs Division

BFI Colonial Landfill Delisting Petition
(LAC 33:V.4999.Appendix E) (HW091P)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Hazardous Waste regulations, LAC 33:V.4999.Appendix E (Log #HW091P).

BFI Waste Systems of Louisiana LLC, Colonial Landfill, petitions to exclude from the hazardous waste regulations (delist) leachate at the facility derived from the historical management of K169 - K172 wastes. BFI is a solid waste nonhazardous landfill. The wastes were accepted as nonhazardous solid waste prior to August 6, 1998, when EPA listed the four wastes as hazardous waste generated from petroleum refining operations. The delisting program is regulated by LAC 33:V.105. Applicants who wish to remove a waste from the list of hazardous wastes must submit a petition and satisfy all requirements of LAC 33:V.105. The exclusion, if granted, is for the specific waste at the specific facility. The department reviewed the BFI petition and found it satisfies the delisting requirements. The department used the Delisting Risk Assessment Software (DRAS) in the evaluation of the impact of the petitioned waste on human health and the environment. The delisting analytical data collected in accordance with the Delisting Sampling and Analysis Plan and the Quality Assurance Project Plan confirmed that Colonial Landfill leachate contains no hazardous characteristics of LAC 33:V.4903, nor any LAC 33:V.3105.Table 1 constituents at a concentration capable of posing a threat to human health or the environment. Based on the information in the petition and extensive testing, the department has determined that the petitioned waste can be delisted, as long as the operating conditions and results of future testing continue to support this determination. The basis and rationale for this rule are to grant the petition based on an evaluation of waste-specific information submitted by BFI Colonial Landfill.

This proposed rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required. This proposed rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

A public hearing will be held on January 24, 2007, at 1:30 p.m. in the Galvez Building, Oliver Pollock Conference Room, 602 N. Fifth Street, Baton Rouge, LA 70802. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Judith A. Schuerman, Ph.D., at the address given below or at (225) 219-3550. Parking in the Galvez Garage is free with a validated parking ticket.

All interested persons are invited to submit written comments on the proposed regulation. Persons commenting should reference this proposed regulation by HW091P. Such comments must be received no later than January 31, 2007, at 4:30 p.m., and should be sent to Judith A. Schuerman, Ph.D., Office of the Secretary, Legal Affairs Division, Box 4302, Baton Rouge, LA 70821-4302 or to FAX (225) 219-3582 or by e-mail to judith.schuerman@la.gov. Copies of this proposed regulation can be purchased by contacting the DEQ Public Records Center at (225) 219-3168. Check or money order is required in advance for each copy of HW091P. This regulation is available on the Internet at www.deq.louisiana.gov/portal/tabid/1669/default.aspx.

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 602 N. Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 111 New Center Drive, Lafayette, LA 70508; 110 Barataria Street, Lockport, LA 70374; 645 N. Lotus Drive, Suite C, Mandeville, LA 70471.

Herman Robinson, CPM
Executive Counsel

Title 33
ENVIRONMENTAL QUALITY

Part V. Hazardous Waste and Hazardous Materials

Subpart 1. Department of Environmental Quality—Hazardous Waste

Chapter 49. Lists of Hazardous Wastes

§4999. Appendices—Appendix A, B, C, D, and E

Appendix E. Wastes Excluded under LAC 33:V.105.M

A. – B.3.b. ...

Table 1 - Wastes Excluded
[See Prior Text in DuPont Dow Elastomers LLC, LaPlace, LA - Motiva Enterprises LLC, Norco, LA, (4)(B)]

Table 1 - Wastes Excluded
BFI Waste Systems of Louisiana LLC, Colonial Landfill, Sorrento, LA
<p><u>The BFI Colonial Landfill is a nonhazardous solid waste landfill permitted to receive residential, commercial, and industrial nonhazardous solid waste. Landfill leachate, at a maximum annual generation rate of 36,000 cubic yards per year (approximately 7.2 million gallons per year), is generated as liquid leachate from the landfill. Effective August 6, 1998, the United States Environmental Protection Agency (USEPA) listed four waste streams as hazardous waste. The EPA Hazardous Waste Numbers of these wastes are: K169, K170, K171, and K172. BFI Colonial received these wastes as nonhazardous solid waste prior to August 6, 1998. For the purpose of this exclusion, landfill leachate resulting from petroleum refining operations includes EPA Hazardous Waste Numbers K169, K170, K171, and K172. The constituents of concern for these wastes are listed as arsenic; benzene; benzo(a)pyrene; dibenz(a,h)anthracene; benz(a)anthracene; benzo(b)fluoranthene; benzo(k)fluoranthene; 3-methylcholanthrene; and 7,12-dimethylbenz(a)anthracene (see LAC 33:V.4901). BFI Colonial must implement a testing and management program that meets the following conditions for the exclusion to be valid.</u></p>
<p><u>(1). Testing</u> Sample collection and analyses, including quality control (QC) procedures, must be performed according to methods described in <i>Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods, EPA Publication Number SW-846</i>, as incorporated by reference in LAC 33:V.110.</p>
<p><u>(1)(A). Inorganic Testing</u> During the first 12 consecutive months of this exclusion, BFI Colonial must collect and analyze a monthly composite sample of the leachate. Composite samples must be composed of one grab sample from each of three different days during a representative week of operation. The monthly samples must be analyzed for the constituents listed in condition (3)(A) prior to disposal of the leachate. BFI Colonial must report to the department the unit operating conditions and analytical data (reported in milligrams per liter) for antimony, arsenic, barium, cadmium, chromium, cobalt, copper, lead, nickel, silver, thallium, tin, vanadium, and zinc, including quality control information. If the department and BFI Colonial concur that the analytical results obtained during the 12 monthly testing periods have been significantly below the delisting levels in condition (3)(A), then BFI Colonial may replace the inorganic testing required in condition (1)(A) with the inorganic testing required in condition (1)(B). Condition (1)(A) shall remain effective until this concurrence is reached.</p>
<p><u>(1)(B). Subsequent Inorganic Testing</u> Following concurrence by the department, BFI Colonial may substitute the following testing conditions for those in</p>

condition (1)(A). BFI Colonial must continue to monitor operating conditions and analyze quarterly composite samples representative of normal operations. BFI Colonial must report to the department the unit operating conditions and analytical data (reported in milligrams per liter) for antimony, arsenic, barium, cadmium, chromium, cobalt, copper, lead, nickel, silver, thallium, tin, vanadium, and zinc, including quality control information. The samples must be composed of one grab sample from each of three different days during a representative week of operation, during the first month of each quarterly period. These quarterly representative composite samples must be analyzed for the constituents listed in condition (3)(A) prior to disposal of the leachate. If delisting levels for any inorganic constituents listed in condition (3)(A) are exceeded in any quarterly sample, BFI Colonial must re-institute testing as required in condition (1)(A). BFI Colonial may, at its discretion, analyze composite samples gathered more frequently to demonstrate that smaller batches of waste are nonhazardous.

(1)(C). Organic Testing

During the first 12 consecutive months of this exclusion, BFI Colonial must collect and analyze monthly one grab sample of the leachate. These monthly representative grab samples must be analyzed for the constituents listed in condition (3)(B) prior to disposal of the leachate. BFI Colonial must report to the department the landfill operating conditions and analytical data (reported in milligrams per liter) for acenaphthene; anthracene; benzene; bis (2-ethylhexyl) phthalate; 2-butanone; m, p-cresol; o-cresol; diethyl phthalate; ethylbenzene; 2-hexanone; methyl isobutyl ketone; 2-methylnaphthalene; naphthalene; phenanthrene; phenol; toluene; and total xylenes; including quality control information. If the department and BFI Colonial concur that the analytical results obtained during the 12 monthly testing periods have been significantly below the delisting levels in condition (3)(B), then BFI Colonial may replace the organic testing required in condition (1)(C) with the organic testing required in condition (1)(D). Condition (1)(C) shall remain effective until this concurrence is reached.

(1)(D). Subsequent Organic Testing

Following concurrence by the department, BFI Colonial may substitute the following testing conditions for those in condition (1)(C). BFI Colonial must continue to monitor operating conditions and analyze one quarterly grab sample representative of normal operations. BFI Colonial must report to the department the landfill operating conditions and analytical data (reported in milligrams per liter) for acenaphthene; anthracene; benzene; bis (2-ethylhexyl) phthalate; 2-butanone; m, p-cresol; o-cresol; diethyl phthalate; ethylbenzene; 2-hexanone; methyl isobutyl ketone; 2-methylnaphthalene; naphthalene; phenanthrene; phenol; toluene; and total xylenes; including quality control information. This quarterly representative grab sample must be collected during the first month of each quarterly period and analyzed for the constituents listed in condition (3)(B) prior to disposal of the leachate. If delisting levels for any organic constituents listed in condition (3)(B) are exceeded in the quarterly sample, BFI Colonial must re-institute testing as required in condition (1)(C). BFI Colonial may, at its discretion, analyze grab samples gathered more frequently to demonstrate that smaller batches of waste are nonhazardous.

(2). Waste Holding and Handling

BFI Colonial must treat the leachate as hazardous waste until the verification testing is completed, as specified in conditions (1)(A)-(1)(D), and the leachate has satisfied the delisting criteria, as specified in condition (3). If the levels of constituents in the samples of leachate are below all of the applicable levels set forth in condition (3), then the leachate thereby becomes nonhazardous solid waste and may be managed and disposed of in accordance with all applicable solid waste regulations. If hazardous constituent levels in any monthly composite or other representative sample equal or exceed any of the delisting levels set in condition (3), the leachate must be managed and disposed of in accordance with Subtitle C of RCRA until the leachate meets the delisting levels. BFI Colonial must repeat the analyses for the constituents listed in conditions (3)(A) and (3)(B) prior to disposal.

(3). Delisting Levels

Concentrations in conditions (3)(A) and (3)(B) must be measured in the extract from the samples by the method specified in LAC 33:V.4903.E. All leachable concentrations in the extract must be less than the following levels (all units are milligrams per liter).

(3)(A). Inorganic Constituents (all units are milligrams per liter)

Antimony—0.082; Arsenic—0.38; Barium—22.2; Cadmium—0.06; Chromium—0.50; Cobalt—27; Copper—0.50; Lead—0.50; Nickel—5.0; Silver—0.50; Thallium—0.34; Tin—225; Vanadium—8.38; Zinc—50.0.

(3)(B). Organic Constituents (all units are milligrams per liter)

Acenaphthene—3.0; Anthracene—0.20; Benzene—0.018; Bis (2-ethylhexyl) phthalate—6.74; 2-Butanone—5.0; m, p-Cresol—7.88; o-Cresol—7.88; Diethyl phthalate—18.6; Ethylbenzene—8.4; 2-Hexanone—6.3; Methyl isobutyl ketone—5.0; 2-Methylnaphthalene—5.0; Naphthalene—0.96; Phenanthrene—1.0; Phenol—50.; Toluene—1.0; Xylenes (total)—1.0.

(4). Changes in Operating Conditions

If BFI Colonial significantly changes the operating conditions specified in the petition, BFI Colonial must notify the department in writing. Following receipt of written approval by the department, BFI Colonial must re-institute the testing required in conditions (1)(A) and (1)(C) for a minimum of four consecutive months. BFI Colonial must report unit operating conditions and test data required by conditions (1)(A) and (1)(C), including quality control data, obtained during this period no later than 60 days after the changes take place. Following written notification by the department, BFI Colonial may replace testing conditions (1)(A) and (1)(C) with (1)(B) and (1)(D). BFI Colonial must fulfill all other requirements in condition (1).

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, LR 20:1000 (September 1994), amended by the Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 21:944 (September 1995), LR 22:830 (September 1996), amended by the Office of Waste Services, Hazardous Waste Division, LR 23:952 (August 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:2397 (December 1999), LR 26:2509 (November 2000), LR29:1084 (July 2003), repromulgated LR 29:1475 (August 2003), amended by the Office of Environmental Assessment, LR 30:2464 (November 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 33:**.

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**LOG #: HW091P

Person

Preparing

Statement: Emad Nofal Dept.: Environmental QualityPhone: (225) 219-3423 Office: Environmental AssessmentReturn 602 N. Fifth St. Rule BFI Colonial Landfill Delisting
Address: Baton Rouge, LA 70802 Title: (LAC 33:V.4999.Appendix E)

Date Rule

Takes Effect: Upon Promulgation**SUMMARY**

In accordance with Section 953 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a fiscal and economic impact statement on the rule proposed for adoption, repeal or amendment. THE FOLLOWING STATEMENTS SUMMARIZE ATTACHED WORKSHEETS, I THROUGH IV AND WILL BE PUBLISHED IN THE LOUISIANA REGISTER WITH THE PROPOSED AGENCY RULE.

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There is no cost or saving to state or local governmental units by implementation of this rule. Approving or disapproving this delisting will not have any financial impacts.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There will be minimal effect on state revenue. BFI now pays \$66 generation fees to DEQ which will no longer be required. St James the Baptist Parish will also lose revenue of approximately \$71,000 per year.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NON-GOVERNMENTAL GROUPS (Summary)

BFI will have an average savings of approximately \$324,000 per year for costs related to disposal based on the reported maximum generation by BFI and the cost per gallon reported by A3M Vacuum Services. \$253,000 will be lost by A3M Vacuum Services (\$324,000 – \$71,000 disposal fees to St. John the Baptist Parish).

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This delisting will help competitive pricing and, thereby, continued employment associated with operations at this facility.

Signature of Agency Head or Designee

Legislative Fiscal Officer or Designee

Herman Robinson, CPM, Executive Counsel
Typed Name and Title of Agency Head or Designee

Date of Signature

Date of Signature

LFO 03/09/2001

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

The following information is requested in order to assist the Legislative Fiscal Office in its review of the fiscal and economic impact statement and to assist the appropriate legislative oversight subcommittee in its deliberation on the proposed rule.

- A. Provide a brief summary of the content of the rule (if proposed for adoption, or repeal) or a brief summary of the change in the rule (if proposed for amendment). Attach a copy of the notice of intent and a copy of the rule proposed for initial adoption or repeal (or, in the case of a rule change, copies of both the current and proposed rules with amended portions indicated).

BFI Waste Systems of Louisiana LLC (BFI) is petitioning to exclude from the hazardous waste regulations (delist) landfill leachate at the Colonial Landfill facility in Sorrento, Louisiana. This rule grants that petition.

- B. Summarize the circumstances which require this action. If the Action is required by federal regulation, attach a copy of the applicable regulation.

LAC 33:V.105.M allows a hazardous waste generator to petition the department for this kind of rulemaking when a listed hazardous waste does not meet any of the criteria that justified the original listing. Based on the information included in the petition and extensive testing, the department has determined that the petitioned waste at the Colonial Landfill facility can be delisted as long as the operating conditions and results of future testing continue to support this determination.

- C. Compliance with Act 11 of the 1986 First Extraordinary Session
(1) Will the proposed rule change result in any increase in the expenditure of funds? If so, specify amount and source of funding.

The proposed rule will not result in any increase in the expenditure of funds.

- (2) If the answer to (1) above is yes, has the Legislature specifically appropriated the funds necessary for the associated expenditure increase?

- (a) ____ Yes. If yes, attach documentation.
(b) ____ No. If no, provide justification as to why this rule change should be published at this time.

This is not applicable.

FISCAL AND ECONOMIC IMPACT STATEMENT**WORKSHEET****I. A. COSTS OR SAVINGS TO STATE AGENCIES RESULTING FROM THE ACTION PROPOSED**

1. What is the anticipated increase (decrease) in costs to implement the proposed action?

COSTS	FY 06-07	FY 07-08	FY08-09
PERSONAL SERVICES			
OPERATING EXPENSES			
PROFESSIONAL SERVICES			
OTHER CHARGES			
EQUIPMENT			
TOTAL	0	0	0
MAJOR REPAIR & CONSTR.	0	0	0
POSITIONS (#)	0	0	0

No costs or savings to state agencies will result from this proposed action.

2. Provide a narrative explanation of the costs or savings shown in "A.1.", including the increase or reduction in workload or additional paperwork (number of new forms, additional documentation, etc.) anticipated as a result of the implementation of the proposed action. Describe all data, assumptions, and methods used in calculating these costs.

Approving or disapproving this delisting will not affect state agency staffing levels. There are no costs or savings associated with implementation of this rule.

3. Sources of funding for implementing the proposed rule or rule change.

SOURCE	FY 06-07	FY 07-08	FY08-09
STATE GENERAL FUND			
AGENCY SELF-GENERATED			
DEDICATED			
FEDERAL FUNDS			
OTHER (Specify)			
TOTAL	0	0	0

No funds are needed to implement this rule.

4. Does your agency currently have sufficient funds to implement the proposed action? If not, how and when do you anticipate obtaining such funds?

No funds are needed to implement this rule.

B. COST OR SAVINGS TO LOCAL GOVERNMENTAL UNITS RESULTING FROM THE ACTION PROPOSED.

1. Provide an estimate of the anticipated impact of the proposed action on local governmental units, including adjustments in workload and paperwork requirements. Describe all data, assumptions and methods used in calculating this impact.

St. John the Baptist Parish will lose approximately \$71,000 per year.

2. Indicate the sources of funding of the local governmental unit which will be affected by these costs or savings.

This is not applicable.

FISCAL AND ECONOMIC IMPACT STATEMENT**WORKSHEET****II. EFFECT ON REVENUE COLLECTIONS OF STATE AND LOCAL GOVERNMENTAL UNITS**

- A. What increase (decrease) in revenues can be anticipated from the proposed action?

REVENUE INCREASE/DECREASE	FY 06-07	FY 07-08	FY08-09
STATE GENERAL FUND	(\$66)	(\$66)	(\$66)
AGENCY SELF-GENERATED			
RESTRICTED FUNDS*			
FEDERAL FUNDS			
LOCAL FUNDS	(\$71,000)	(\$71,000)	(\$71,000)
TOTAL	(\$71,066)	(\$71,066)	(\$71,066)

*Specify the particular fund being impacted.

Currently leachate is transported by A3M Vacuum Company to be disposed at St. John the Baptist Parish Waste Water Disposal Services, Inc facility (WWD). BFI pays \$66 generation fees per year to the state. When the delisting is approved, the solid waste will be disposed onsite, which will not cost the facility any money. The state will lose the \$66 per year.

- B. Provide a narrative explanation of each increase or decrease in revenues shown in "A." Describe all data, assumptions, and methods used in calculating these increases or decreases.

Delisting the leachate means the waste will no longer be regulated as hazardous waste and therefore can be disposed as industrial solid waste. The state will lose the annual revenue of \$66.

St. John the Baptist Parish will lose approximately \$71,000 per year paid by A3M Services for disposal of the waste.

III. COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS

- A. What persons or non-governmental groups would be directly affected by the proposed action? For each, provide an estimate and a narrative description of any effect on costs, including workload adjustments and additional paperwork (number of new forms, additional documentation, etc.), they may have to incur as a result of the proposed action.

Delisting the leachate means it will no longer be regulated as hazardous waste and therefore can be disposed as industrial solid waste. BFI will have an average annual savings of \$324,000. \$253,000 will be lost by A3M Vacuum Services for transportation and handling of the waste (\$324,000 – \$71,000 disposal fees to St. John the Baptist Parish).

- B. Also provide an estimate and a narrative description of any impact on receipts and/or income resulting from this rule or rule change to these groups.

Income of approximately \$253,000 currently received yearly by A3M Vacuum Services will be lost.

IV. EFFECTS ON COMPETITION AND EMPLOYMENT

Identify and provide estimates of the impact of the proposed action on competition and employment in the public and private sectors. Include a summary of any data, assumptions and methods used in making these estimates.

The effects on competition are positive to BFI, since they are going to save money, which can assure competitive pricing and continued employment associated with this operation. On the other hand, the income loss by A3M and St. John the Baptist Parish may have negative effects that are hard to estimate due to lack of information on the relative significance of the lost income compared to their overall income.